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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the PATENT application of)	On appeal from:
)	
Kelly GRAVELLE)	Group Art Unit: 3625
)	
Application No.: 09/864,443)	Examiner: Mark A. Fadok
)	
Filing Date: May 25, 2001)	
)	Atty. Dkt.: 114944-00209
For: AVI for Expedited Mobile Ordering)	
And Fulfillment)	

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present Reply Brief is submitted to address the new arguments raised in the Examiner's Answer mailed March 24, 2005.

On pages 4 and 5, the Examiner's Answer seeks to rebut "applicant's argument that there is no suggestion to combine the references" by citing teachings in *Hall et al* which would supposedly have motivated such a combination. However, Appellant's argument is not merely that there is no suggestion to combine, but that the references teach away from the combination (see Appeal Brief filed November 19, 2004, paragraph spanning pages 7 and 8). The Examiner's Answer does not explain how the quoted teachings from *Hall et al* overcome that teaching not to combine.

In the last paragraph of page 5, the Examiner's Answer notes that *Hall et al* includes a database correlating the identification given with a customer's credit-card number. The Appellant agrees that the reference teaches such a thing; indeed, the Appellant pointed out that

teaching of the reference in the Appeal Brief. However, the Examiner's Answer seeks to equate that teaching in the reference with the claim limitation directed to identifying a wireless tag identification number corresponding to the identification provided. In doing so, the Examiner's Answer does not even address the issue of teaching away from the invention which was, as noted above, raised in the Appeal Brief. Neither the cited teachings in *Hall et al* nor any other part of the reference teaches or suggests that the identification given is a wireless tag identification number. The Examiner's Answer finds the missing teaching in *Kuykendall*; however, until the teaching away from the combination is overcome, the teaching of the secondary reference is beside the point.

In the first paragraph of page 6, the Examiner's Answer reiterates the position that the references provide teaching to combine. In response, the Appellant reiterates his position that the references provide teaching away from the combination, a position which goes unchallenged in the Examiner's Answer.

In the middle paragraph of page 6, with regard to claims 6 and 21, the Examiner's Answer notes that *Hall et al* teaches using a telephone number. However, even so, the Appellant respectfully submits that the combination of references would not have resulted in the present claimed invention. In the present claimed invention, a wireless tag identification number corresponding to the telephone number is identified. That identification offers an advantage in that when the person who placed the order pulls into the restaurant, the vehicle can be matched with the order. The applied references neither teach nor even vaguely suggest any such step of identification or the advantage which it offers, and a person having ordinary skill in the art who had reviewed the references would not have been taught any such process.

As an independent argument, the Appellant notes that Fig. 5 of *Hall et al* does not show the information which the customer provides as part of placing an order. Instead, Fig. 5 of the references shows a customer account database 374, which contains a list of participating customers and their account information, including usual orders and other customer preferences. In other words, the customer account database 374 is populated in advance. Therefore, the mere fact that a particular datum is included in the customer database is not evidence that such datum is provided when the customer places an order.

Therefore, the Appellant respectfully submit that the step of identification recited in claims 6 and 21 imparts separate patentability.

In the paragraph spanning pages 6 and 7, with regard to claims 7 and 22, the Examiner's Answer argues that since the term "personal identification number" is not defined, the broadest reasonable definition may be used. The Examiner's Answer equates the credit-card information of Fig. 5 of *Hall et al* with such a personal identification number. However, it is well settled law that the broadest reasonable definition must still be consistent with the meaning which would be understood by one of ordinary skill in the art. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997); *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). In the present case, the Appellant respectfully submits that the Examiner's Answer, in equating the personal identification number of the present claims with the credit-card number of the applied reference is not consistent with the meaning given to the term "personal identification number" by those having ordinary skill in the art, which is a number *separate from* sensitive information such as credit-card numbers.

As an independent argument, the Appellant notes that Fig. 5 of *Hall et al* does not show the information which the customer provides as part of placing an order. Instead, Fig. 5 of the

references shows a customer account database 374, which contains a list of participating customers and their account information, including usual orders and other customer preferences. In other words, the customer account database 374 is populated in advance. Therefore, the mere fact that a particular datum is included in the customer database is not evidence that such datum is provided when the customer places an order.

Therefore, the Appellant respectfully submits that the claim limitation directed to the personal identification number provides a separate basis for patentability.

Finally, in the middle paragraph of page 7, the Examiner's Answer asserts that the claim limitation directed to correlating the read tag identification number with a record of validated tags is taught in the references because each time a car with a toll transponder passes through a toll gate, the transponder is read and correlated to a user, who is billed. Even so, the applied references neither teach nor even vaguely suggest such an activity as part of a means or step for identifying items, as called for in present claims 16 and 31. Therefore, the Appellant respectfully submits that even with the additional teaching set forth in the Examiner's Answer, the proposed combination of references would not have resulted in or otherwise rendered obvious the present claimed invention.

For the reasons set forth above and in the Brief on Appeal, the Appellant respectfully
urges reversal of the rejection of claims 1-31.

Respectfully submitted,

By: 

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